

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 351
Tuesday, August 18, 2009, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

Members Present	Members Absent	Staff Present	Others Present
Charney, Vice Chair Dillard, Secretary Hutson, Chair Tyndall Walker		Butler Cuthbertson	West, Co. Inspector

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, Wednesday, August 12, 2009 at 2:04 p.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Hutson called the meeting to order at 1:30 p.m.

Mr. Cuthbertson read the rules and procedures for the County Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of Walker, the Board voted 5-0-0 (Tyndall, Walker, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of July 21, 2009 (No. 350).

NEW APPLICATIONS

Case No. 2338

Action Requested:

Special Exception to permit a fireworks stand (Use Unit 2) in an AG district (Section 310), located: 20813 West Coyote Trail.

Presentation:

The applicant was not present. The Chair moved the case to the end of the docket.

Case No. 2339

Action Requested:

Special Exception to permit a fireworks stand (Use Unit 2) in an AG district (Section 310), located: 3110 South 65th West Avenue.

Presentation:

Jerry Haynes, 2202 South 65th West Avenue, Tulsa, Oklahoma, 74107, represented the applicant. The church wants to raise money for youth mission trips and the volunteer fire department.

Comments and Questions:

He responded to questions from the Board, stating the stand would probably be open from 5:00 p.m. to 10:00 p.m. the week before the Fourth of July. He stated the parking would be on the asphalt parking lot shared with the church, with good access.

Interested Parties:

There were no interested parties.

Board Action:

On Motion of Charney, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a fireworks stand (Use Unit 2) in an AG district (Section 310), with approval for five years with hours of operation to close by 10:00 p.m. from June 23rd to July 5th, on the following described property:

BEG 74 S NE COR TH S 375 W 210N 375 E 210 TO BG SEC 19 19 12, BERRY HILL ACRE Tulsa County, State of Oklahoma

Case No. 2340

Action Requested:

Special Exception to permit a fireworks stand (Use Unit 2) in an RS district (Section 410); and a Variance of the paving material to permit gravel for temporary parking (Section 1340.D), located: 12856 South 114th East Avenue.

Presentation:

Monty Kapchinsky, 16352 East Highway 20, Claremore, Oklahoma, 74019, proposed to put a fireworks stand on this property. The property owners did not realize they had to have a permit to operate the stand this year.

Comments and Questions:

Mr. Charney noted the property is part of a platted subdivision. He asked whether access would be gained from the arterial or the neighborhood. Mr. Kapchinsky replied there is access from the arterial onto a gravel parking area. He did not think any traffic could come in from the neighborhood. The front of the house has access to the neighborhood but not the back. The stand would face Garnett.

Interested Parties:

Gordon Holmes, 12822 South 119th East Avenue, stated that in 1997 the property owner was running a flea market and used car lot. They were informed by the zoning officer at that time that they could not run a fireworks stand without a permit, but they have operated one at least twice since then without a permit. He informed the Board that the intersection at 131st and Garnett is dangerous, as it is a raised intersection. He was concerned because it is a residential area. He did not want this to set a precedent for other types of sales again. He submitted a petition (Exhibit A-1) of property owners in the immediate area in opposition.

Applicant's Rebuttal:

Mr. Kapchinsky stated he has a fireworks warehouse in Claremore. He supplies fireworks to individuals or groups who want to run a fireworks stand.

Board Action:

On **Motion of Walker**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a Special Exception to permit a fireworks stand (Use Unit 2) in an RS district (Section 410); and a Variance of the paving material to permit gravel for temporary parking (Section 1340.D), finding the Special Exception would not be in harmony with the spirit and intent of the Code, and would be injurious to the neighborhood or otherwise detrimental to the public welfare on the following described property:

LT 6 BLK 7, WILLOW SPRINGS WEST ADDN, Tulsa County, State of Oklahoma

Case No. 2341

Action Requested:

Special Exception to permit a church and similar uses (Use Unit 5) in an AG district (Section 310), located: 18610.

Presentation:

Phil Arnold, 316 North 6th Street, Broken Arrow, Oklahoma, 74012, stated he is Pastor of this church. They would like to renovate and convert the existing house into a church. They have plans to build a new facility in the future but have no details as of now.

Comments and Questions:

Mr. Hutson noted the proposed parking area. Rev. Arnold was not aware it was too close to the street, but that it needed a hard surface. Mr. Cuthbertson suggested the Board might want to keep it in mind if they are inclined to approve the application per plan that the parking lot needs to be moved back from the front property line. He also pointed out that on 91st Street the property is not platted and there is no right-of-way dedicated to 91st Street.

Interested Parties:

Paul Markham, 9220 South 187th East Avenue, Broken Arrow, Oklahoma, 74012, stated he owns the property directly east of the subject property. He stated he has seen the house on the property flood and there is a bad drainage issue in the neighborhood and 91st Street. He stated traffic on 91st Street has increased.

Applicant's Rebuttal:

Mr. Arnold stated the majority of their membership lives in the area. They have been in the same area for a year and are familiar with the flooding issues. They anticipate using the house until they are ready to build.

Commenting and Questions:

Mr. Cuthbertson stated if this case is approved it will trigger the platting requirement, which will have to be satisfied, whether they want to build a new building or not, before they get a permit to use the property for a church. The County Engineer will look at the technical issues of drainage, flood plain, sewer systems, and right-of-way on 91st Street. They would require at least 50 ft. of right-of-way. Once the property is platted it will put the house close to the right-of-way, and any new development is based on platted property lines. In an AG district any new structure will have to be set back at least 35 ft. from the property line. He suggested it should probably be 85 ft. from the centerline on this plan for the new parking lot. When it is constructed they will have to meet current county requirements. They will not be allowed to increase the rate of run-off onto neighboring properties. Mr. Cuthbertson mentioned that the City of Broken Arrow is starting to require sidewalks for any new developments along arterial streets. The County is becoming consistent about requiring sidewalks.

Board Action:

On **Motion of Charney**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a church and similar uses (Use Unit 5) in an AG district (Section 310), as requested, subject to the platting process; with condition for an extension of the sidewalks when new improvements are constructed; finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare on the following described property:

W. 166 NW NW NE SEC 24 18 14, Tulsa County, State of Oklahoma

Case No. 2342

Action Requested:

Variance of maximum number dwellings permitted on an AG zoned lot from 2 to 3, to permit a third dwelling on a 15 acre tract (Section 206), located: 19536 South 43rd East Avenue.

Presentation:

Barbara Lorenzen, 19430 South 43rd, Bixby, Oklahoma, 74008, proposed to place a third home on the property, to replace one. She stated she has had a third home on the property for 30 years and has never had to come to this Board before. She submitted letters from the electric company, water department, and the post office, stating it has been a viable third residence for all those years (Exhibit B-1).

Comments and Questions:

Mr. Charney asked if there is a land sale transaction pending that requires an easement. Ms. Lorenzen replied there were not.

Interested Parties:

Kendra Taylor, 2113 West Jasper, Apartment A, stated she is Ms. Lorenzen's granddaughter. She informed the Board this home is intended to be permanent with a foundation, paved driveway, and fencing.

Mr. Cuthbertson stated the County needed evidence proving this condition (three dwellings) existed prior to the inaction of the current zoning code to consider it legal non-conforming and issue a permit. Mrs. Lorenzen could not provide an aerial or documents to prove there were three dwellings on this property for the stated length of time; therefore Board action is necessary.

Board Action:

On **Motion of Charney**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of maximum number dwellings permitted on an AG zoned lot from 2 to 3, to permit a third dwelling on a 15 acre tract (Section 206), given the size of the tract and the evidence they have heard that a third home has been on the property for an extensive period of time, and finding that a variance would be appropriate, and not cause any undue hardship; finding this condition has existed for over thirty years, on the following described property:

SW SW NE & S/2 NW SW NE LESS E25 SEC 9 16 13, Tulsa County, State of Oklahoma

Case No. 2343

Action Requested:

Variance of the 30 ft. of frontage required on a public street to permit a lot split in the AG district (Section 207), located: 14022 East 136th Street North.

Mr. Cuthbertson stated there should have been two requests on this application. The applicant actually applied for it, upon staff's advice, for two elements of relief to accommodate a lot split. The second element was a variance of the average lot width. In order to create two lots on the rear of the property, they need the variance of the average lot width. The second variance was included on everything except the advertisement, so it would need to be advertised for a future meeting.

Presentation:

Richard Flannery, 3308 Heritage Drive, Claremore, Oklahoma, 74019, stated this is the last piece of property to divide from the original property. He described the history of division of the property to different family members. He identified the large pond on the south end of the property as the limiting factor.

Comments and Questions:

Mr. Charney asked how many residences would be served by this 30 ft. wide access. Mr. Flannery replied there would be two. Mr. Hutson stated that a small subdivision was created without following the zoning code. This would be the fourth split.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion** of **Walker**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a Variance of the 30 ft. of frontage required on a public street to permit a lot split in the AG district (Section 207), finding this would be the fourth split of the property without any unique condition with the land, on the following described property:

E390 E/2 NW NE LESS E220 N520 THEREOF & LESS W140N520 THEREOF & LESS N50 THEREOF FOR RD SEC 33 22 14, Tulsa County, State of Oklahoma

Case No. 2344

Action Requested:

Special Exception to permit a church (Use Unit 5) in an RE zoned district (Section 410), located: 13401 E 76th Street North.

Presentation:

Frank Plato, 3525 South Toledo Place, Tulsa, Oklahoma, 74135, stated he is an elder at the church. He added that the majority of the membership has moved into the Owasso area. They proposed to relocate to better serve the membership. They have services Sundays, 10:30 a.m., 11:30, and 6:00 p.m., and Wednesdays at 7:00 p.m. They have an average of 28 to 30 parked cars on a given Sunday. They have two special event conferences lasting one-week each per year in addition to normal church services. They do not have a kitchen, gymnasium or meeting facility for other activities. The existing building would be exclusively used by the church. They sold the present facility more quickly than they expected so they do not have plans prepared for the new property. He stated they are aware of the need for a building permit, site plans, and other zoning code requirements.

Interested Parties:

Loretta Tittle, 13331 East 76th Street North, Owasso, Oklahoma, 74055, expressed concerns regarding drainage, flooding, the narrow road, numerous car accidents, and increased traffic.

Applicant's Rebuttal:

Mr. Plato stated if they could get the concept approved they would obtain a site plan and meet the zoning requirements for permits. He stated that their service times are during low traffic times on Sundays. He added there would be no need to direct traffic through the neighborhood.

Comments and Questions:

Mr. Dillard stated it was premature for the applicant to bring the application to the Board without plans. Mr. Walker agreed the Board did not have anything to act upon. He suggested a continuance to give the applicant time to show the Board their plans. Mr. Charney was concerned that it is a platted residential lot, which calls for more detail and review. He suggested the church needs to know the required criteria before presenting an application to the Board.

Board Action:

On **Motion** of Walker, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 2343 to the meeting on ~~September 18, 2009~~, as stated by error in the motion, the correct date is September 15, 2009, on the following described property:

LT 7 BLK 2, GRACELAND ACRES, Tulsa County, State of Oklahoma

Mr. Cuthbertson suggested the applicant might want to meet with the County Engineer, Ray Jordan, regarding storm water drainage and access to the property. He also suggested the applicant do some outreach to the neighborhood related to those issues.

Case No. 2345

Action Requested:

Variance of the frontage requirement from 30 ft. to 0 ft. to permit a lot split (Section 330), located: 4053 East 86th Street North.

Presentation:

Lloyd Wyzard, 4053 East 86th Street North, Sperry, Oklahoma, 74073, they proposed to extend their private drive to sell a tract of land to accommodate the construction of a new house.

Comments and Questions:

Mr. Hutson confirmed they want to run the easement north on North 41st Street. Mr. Cuthbertson stated this request is more to permit a residential dwelling. The applicant provided information that suggests this property has been an independent parcel since prior to 1980 and zoned AG. They can split the AG zoned property if it is over five acres. The requirement is for 30 ft. of frontage to permit a dwelling. He thought they wanted to make it official by obtaining the lot split and permit for a dwelling. Mr. Hutson noted by doing this they would create two lots. Mr. Walker asked how many residences would be served by this access. Mr. Cuthbertson replied there are two currently.

Interested Parties:

There were no interested parties.

Board Action:

On Motion of Charney, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the frontage requirement from 30 ft. to 0 ft. to permit a lot split (Section 330), finding the unusual land configuration as it has existed for many years (before the current zoning code), and the body of water near the front; with condition that the five acres in the rear would not be split again without going through the platting process; finding it will not cause any detriment to the neighborhood or impair the spirit of the code, on the following described property:

BEG 162W SECR SW N484 W91 N30 W46 N299 E299 N510 TONEC SE SW E329.5 S661.5 W329.5 S331.5 E329.5 S330 W491.5 POB LESS BEG 162W SECR SW TH N44.84 NE128.29 ELY340 N115 ELY26.32 S185 W491.5 POB SEC 21 21 13, Tulsa County, State of Oklahoma

Case No. 2338

Action Requested:

Special Exception to permit a fireworks stand (Use Unit 2) in an AG district (Section 310), located: 20813 West Coyote Trail.

Presentation:

The applicant was still not present.

Board Action:

On **Motion of Dillard**, to **DENY** Case No. 2338, due to lack of attendance, interest and specificity of absence, Mr. Cuthbertson presented a question on the motion. He suggested that staff contact the applicant and offer to continue the case to next month.

On **Motion of Dillard**, the Board voted 2-3-0 (Dillard, Charney "aye"; Walker, Tyndall, Hutson "nay"; no "abstentions"; no "absences") to **DENY** Case No. 2338, due to lack of attendance, interest and specificity of absence.

On **Motion of Hutson**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 2338 to the meeting on ~~September 18, 2009~~, as stated by error in the motion, the correct date is September 15, 2009, on the following described property:

BEG 548.98S & 137.97 SELY CRV RT & 84.33SE NWC NWNW TH NE404.52
SE302.09 SW404.52 NW302.09 POB SEC26 19 10, Tulsa County, State of
Oklahoma

There being no further business, the meeting adjourned at 3:14 p.m.

Date approved: 9/15/09
David E. Charney
Chair